IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.313 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BANKIMBHAI JAYANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner Nos.1-5

MR MR MENGDE, A.G.P. for Respondent Nos.1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 17/06/2002

ORAL JUDGEMENT

Heard Mr.M.B.Gandhi, learned advocate for the petitioners. Mr.M.R.Mengde, learned A.G.P. appearing for the respondents.

2. The petitioners were holding joint family properties situated in Kalupur Ward No.1 bearing City Survey Nos.1957/A-B-C, 1958/C, 1958/D, 1959, 1960, 1961/B, 1961/C, 1961/D and 1962 to 1971, totally admeasuring 451-34-62 sq.mtrs. It appears that Petitioner Nos.1 to 4, who were the co-owners of the

property in question wanted to sell the same in favour of Petitioner No.5 and hence as required under the provisions of The Gujarat Prohibition Of Transfer Of Immovable Properties And Provision For Protection Of Tenants From Eviction From Premises In Disturbed Area Act, 1991 (the 'Act' for short) made an application seeking permission from Respondent No.2. Accordingly Respondent No.2 carried out necessary inquiries under Section 5(3)(b) of the Act and ultimately on 13th November, 2001 granted permission to transfer the property to petitioner No.5. There is no dispute as to the fact that the inquiry as required under the provisions of the Act had duly been carried out by Respondent No.2.

3. On 14th December, 2001, Respondent No.2 in purported exercise of power under Section 5(2) of the Act cancelled the permission granted earlier on 13th November, 2001 by declaring the transfer as null and void. It is this order which is under challenge.

4. The say of the petitioners is that Respondent No.2 does not have any jurisdiction nor any power to pass the impugned order (Annexure-C) by invoking provisions of Section 5(2) of the Act. On behalf of the respondents it is contended that Respondent No.2 had received letter dated 22nd December, 2001 from Police Inspector, Kalupur Police Station and an application dated 05th December, 2001 from residents of Dayabhai's Wadi. It is stated in the reply affidavit dated 02nd May, 2002 that as Respondent No.2 authority came to know that the property is in the sensitive area of Kalupur and the tenants are residing in the said property, the sale in pursuance of the permission granted may result in communal tension and hence to avoid adverse effect, order dated 13th November, 2001 was cancelled and the impugned order under Section 5(2) of the Act was passed. The Ld. A.G.P. submitted that if the petitioners were aggrieved by the aforesaid order of 14th December, 2001 they could file an appeal as provided under Section 6 of the Act.

5. The scheme of the Act goes to show that the Act was framed to declare certain transfers of immovable property in disturbed areas of the State to be void and to prohibit temporarily transfers of immovable property in such areas as well as for providing protection to tenants of certain immovable properties in such areas from eviction.

6. Section 3 of the Act provides for powers to declare a particular area as a disturbed area for a

specified period. Section 4 declares that notwithstanding anything contained in any other law for the time being in force but subject to sub-sections (2) and (3) all transfers of immovable property situated in a disturbed area made during the specified period shall be null and void, with effect from the date of such transfer. However, sub-section (2) carves out exception whereby any person intending to transfer may approach the Collector for a declaration that the transfer of immovable property was made by free consent of the transferor and the transferee and on receipt of such application the Collector is required to hold an inquiry as provided in the said clause and thereafter either reject the application or declare that such transfer was made with free consent and for a fair value.

7. Section 5 lays down similar scheme in relation to a disturbed area where a transfer has not yet been effected i.e. seek a previous sanction. On reading of the entire Act it is apparent that the powers granted to the respondent authority under the Act do not permit cancellation of sanction which is validly granted. Only power available under Section 2 sub-section (5) is to consider transfer of immovable property made in contravention of sub-section (1) of Section 5 to be null and void. As the facts that have come on record show it is not anybody's case that there was any contravention of Section 5(1). Nor is it stated that Respondent No.2 was not aware that the application seeking previous sanction pertained to property situated in the disturbed area as declared under Section 3 of the Act. The application made by the so-called tenants also does not carry the case of the respondent any further. The only protection which the tenants had under the provisions of the Act is available under Sections 13,14 and 15 of the Act i.e. in a situation where by reason of any riot or violence of mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let. Thus, on facts these provisions do not apply.

8. Section 6 of the Act provides that a person aggrieved by rejection of an application under Section 4(2)(b)(i) or Section 5(3)(b)(i) of the Act may prefer an appeal before the State Government. In the present case, admittedly the impugned order is made under Section 5(2) of the Act. Therefore, Section 6 of the Act will not be available to the petitioner.

9. In light of the scheme of the Act and undisputed facts which have come on record, it is not possible to

uphold the impugned order dated 14th December, 2002 (Annexure-C). It is, therefore, hereby declared that the impugned order Annexure-C passed on 14th December, 2001 is without jurisdiction and hence illegal and void.

The petition stands allowed accordingly. Rule made absolute with no order as to costs.

(D.A.Mehta J)

'Bhavesh'